United Nations A/67/171

General Assembly

Distr.: General
24 July 2012

Original: English

Sixty-seventh session
Item 135 of the provisional agenda*
Human resources management

Practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2011 to 30 June 2012

Report of the Secretary-General

Summary

The present report is submitted in response to the request of the General Assembly in paragraph 16 of its resolution 59/287 that Member States be informed on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action, taken in accordance with the established procedures and regulations. The report covers the period from 1 July 2011 to 30 June 2012.

The General Assembly is invited to take note of the report.

* A/67/150.

12-43619 (E) 140812

Please recycle

I. Introduction

1. The present report is submitted in response to the request of the General Assembly in paragraph 16 of its resolution 59/287 that Member States be informed on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action, taken in accordance with the established procedures and regulations. The present report covers the period from 1 July 2011 to 30 June 2012.

2. As requested in paragraph 17 of resolution 59/287, an information circular will be issued so that all staff of the Organization will be informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff members concerned.

3. A broad overview of the administrative machinery in disciplinary matters is provided in section II below so that the information provided in sections III and IV can be understood in context. Section III contains a summary of the cases for which one or more disciplinary measures were imposed by the Secretary-General during the reporting period. Section IV contains comparative data reflecting the number of cases referred for action during the reporting period and the disposition of cases that were completed during the reporting period, including cases that did not result in the imposition of a disciplinary measure. Section V provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

II. Overview of administrative machinery in disciplinary matters in the system of administration of justice

A. Legislative framework governing the conduct of staff members[1]

4. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

5. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 1.2 for specific instances of expected or prohibited conduct.

B. Misconduct

6. Article X of the Staff Regulations provides in regulation 10.1 (a) that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff rule 10.1 (a) provides that the "failure by a staff member to

[1] Provisions relating to the status, the rights and the obligations of staff members, and to disciplinary matters, can be found in the electronic version of the Human Resources Handbook under the headings "Status, basic rights and duties" and "Disciplinary".

comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct". Additionally, staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within these parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371/Amend.1, on revised disciplinary measures and procedures,[2] provides further examples of conduct for which disciplinary measures may be imposed. A new administrative instruction on investigations and the disciplinary process is under preparation and is the subject of ongoing discussion and consultation with management and stakeholders.

C. Due process

7. The investigation and disciplinary processes set out in ST/AI/371/Amend.1 involve investigating possible misconduct, establishing the facts and analysing the information gathered to determine whether it is misconduct or not, and then exercising discretion to decide whether a measure of one kind or another is warranted. A manager may become aware, through a formal report, or through other means, that a staff member may have engaged in possible misconduct. The decision whether to initiate an investigation normally lies with the Head of Department or Office. Depending on the subject matter and complexity of an investigation, it can be undertaken by the Head of Department or Office or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of the Head of Department or Office. Where the Head of Department or Office believes, following an investigation, that misconduct may have occurred, he or she will refer the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.[3]

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the staff member is notified in writing of the allegations of misconduct and is informed of his or her opportunity to comment on the allegations and of his or her right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance or from outside counsel at his or her own expense. The staff member is given a reasonable opportunity to respond to the allegations of misconduct. In the light of the comments provided by the staff member, the Assistant Secretary-General for Human Resources Management decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management decides, on behalf of the Secretary-General, whether to impose one or more of the disciplinary measures provided for in staff rule 10.2 (a).

[2] See also ST/SGB/2008/5.

[3] The head of administration of a mission will refer the case to the Department of Field Support at Headquarters, which will refer the matter to the Office of Human Resources Management if it concurs with the mission's assessment.

9. At any time pending an investigation until the completion of the disciplinary process concerning a staff member, the Assistant Secretary-General for Human Resources Management may decide, on the basis of a recommendation from the Head of Department or Office or on his or her own initiative, to place a staff member on administrative leave with pay where: (i) reassignment or redeployment in the same duty station is not feasible, or would not adequately address the risks that have been identified; (ii) there is prima facie evidence that the conduct of the staff member poses a danger to other United Nations personnel or to the Organization; (iii) the staff member is unable to continue to perform his or her functions effectively because of an ongoing investigation and the nature of the functions; (iv) there is prima facie evidence that continued service by the staff member would create an unacceptable risk that he or she could interfere with the investigation; or (v) the Department of Safety and Security determines that the continued presence of the staff member on United Nations premises could constitute a security risk to the Organization. Decisions on placement on administrative leave without pay are taken by the Under-Secretary-General for Management.

10. In accordance with staff rule 10.3 (c), a staff member against whom a disciplinary measure has been imposed may submit an application to the Dispute Tribunal challenging the imposition of the measure(s) in accordance with chapter XI of the Staff Rules.[4]

D. Disciplinary measures

11. Staff rule 10.2 (a) provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in a particular case):

(a) Written censure;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

[4] Judgements of the Dispute Tribunal relating to disciplinary cases can be found on the website of the Office of Administration of Justice (www.un.org/en/oaj).

F. Other measures

12. Written or oral reprimands, recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands, like warnings or letters of caution, are administrative/managerial measures that are important for upholding standards of proper conduct and promoting accountability. Additionally, where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

III. Summary of cases for which the Secretary-General imposed disciplinary measures during the period from 1 July 2010 to 30 June 2011

13. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure(s) imposed by the Secretary-General. The summaries do not set out all of the circumstances and details of each case. As the United Nations Dispute Tribunal has observed, disciplinary cases tend to be very fact-specific and one must exercise caution in extracting general principles concerning proportionality of disciplinary measures from the types of measures imposed in other cases, as each case has its own unique facts and features. In accordance with staff rule 10.3 (b), disciplinary measures imposed must be proportionate to the nature and the gravity of the misconduct involved. The United Nations Appeals Tribunal has observed that proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The Appeals Tribunal has also consistently recognized that the Secretary-General has a margin of discretion to make legitimate choices between competing considerations and priorities, and that due deference must be shown to his administrative decisions because Article 101 (3) of the Charter requires him to hold staff members to the highest standards of integrity and he is accountable to the Member States of the United Nations in this regard.

14. Both aggravating and mitigating circumstances factors are looked at in determining a sanction, but these will vary according to the unique facts of a case. The United Nations Dispute Tribunal has observed that mitigating circumstances may include long and satisfactory service with the Organization; an unblemished disciplinary record; an employee's personal circumstances; sincere remorse; restitution of losses; voluntary disclosure of the misconduct committed; whether the disciplinary infraction was occasioned by coercion, including on the part of fellow staff members, especially one's superiors; and cooperation with the investigation. Aggravating factors may include repetition of the acts of misconduct; intent to derive financial or other personal benefit; misusing the name and logo of the Organization and any of its entities; and the degree of financial loss and harm to the reputation of the Organization. This list of mitigating and aggravating circumstances is not exhaustive and these factors, as well as other considerations, may or may not apply, depending on the particular circumstances of the case. For example, as the Dispute Tribunal has observed, an "unblemished record" does not automatically

qualify as a mitigating factor. It must be analysed in the light of all the evidence in the particular case.

15. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. As set out in paragraph 59 of the present report, when a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to allegations of misconduct, the staff member is informed that the case is closed, and he/she is considered cleared of the allegations. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record may be made and placed in the former staff member's official status file so that the matter can be further considered if and when the staff member rejoins the Organization.

Sexual exploitation and abuse

16. A staff member attempted to obtain sexual favours from a job applicant, who was a beneficiary of assistance, in return for offering to provide assistance with the United Nations recruitment process. The staff member falsely suggested to the applicant that there was a problem with the application form, and invited the applicant to the staff member's residence to review the application. In the context of the invitation to the applicant, the staff member made sexually suggestive remarks. Once the intended victim made clear that the staff member's advances were unwelcome, the staff member agreed to submit the application in accordance with regular procedures. *Disposition*: Separation from service, with compensation in lieu of notice, and without termination indemnity. *Appeal*: None.

Harassment, including sexual or gender harassment

17. A staff member, with managerial responsibilities, engaged in a pattern of improper and unwelcome conduct. The staff member commented on the appearance of and made unwelcome advances to other staff members; made derogatory and inappropriate comments, including of a sexual nature; and confronted staff members about complaining. The staff member also engaged in erratic, abusive and threatening behaviour. The staff member's conduct created an intimidating, hostile or offensive work environment. It was directed primarily by the staff member towards junior colleagues. The staff member also used United Nations computer resources to receive, view and store pornography. *Disposition*: Separation from service with compensation in lieu of notice, but without termination indemnity. *Appeal*: Filed with the Dispute Tribunal, where the case remains under consideration.

18. On one occasion after work hours, a staff member made unwelcome sexual advances towards a colleague. *Disposition*: Demotion of one grade with deferment, for three years, of eligibility for consideration for promotion. *Appeal*: Deadline to appeal had not expired as of the submission of the present report.

19. A staff member used insulting language towards another staff member, on the telephone and in e-mails. The staff member repeated their remarks in a later meeting with the staff member and their supervisors. The evidence indicated that, while the

case arose out of a breakdown in communication and a misunderstanding of the nature of the relationship, the staff member's behaviour escalated, despite the other staff member's attempts to make clear that it was unwelcome and offensive. *Disposition*: Censure and loss of five steps in grade. *Appeal*: Deadline to appeal has not expired as of the submission of the report.

Abuse of authority

20. A staff member allowed a person to work for five months under direct supervision, without remuneration, in the knowledge that the person did not have a valid employment contract with the Organization. There was no evidence that the staff member was motivated by personal gain or bad faith. The person was retroactively remunerated for their work. *Disposition*: Demotion of one grade with deferment, for a period of three years, of eligibility for consideration for promotion. *Appeal*: None.

Retaliation

21. Two senior staff members took action that was detrimental to the interests of another staff member, who had made a report of possible misconduct against those staff members. *Disposition*: Fines. *Appeal*: Deadlines to appeal had not expired as of the submission of the report.

Assault (verbal and physical)

22. A staff member verbally abused their supervisor by shouting, using a threatening tone and threatening to kill the supervisor; physically abused another staff member by grabbing the staff member's shirt, pushing the staff member to the ground and attempting to hit the staff member with a mobile telephone; and verbally abused the same colleague and two other staff members, threatening their safety and that of their families. This case was the subject of two separate investigations and referrals but was processed as one disciplinary case. *Disposition*: Dismissal. *Appeal*: None.

23. A staff member physically assaulted another staff member by detaching an armrest from an office chair and throwing it at the other staff member's face, resulting in injury to the staff member's right eye and forehead. *Disposition*: Dismissal. *Appeal*: None.

24. A staff member physically assaulted another staff member by hitting the other staff member in the head with a metal pipe, resulting in injuries to the staff member's head. *Disposition*: Dismissal. *Appeal*: None.

25. A staff member physically assaulted a United Nations Volunteer, who was also the staff member's spouse, by repeatedly biting and hitting with a small table, throwing the spouse to the ground, repeatedly attempting to strangle the spouse, and repeatedly beating the spouse with a telephone following an attempt to call for assistance. The victim sustained multiple traumatic injuries that required hospitalization. *Disposition*: Dismissal. *Appeal*: None.

26. A staff member on three occasions acted in a verbally disrespectful and disruptive manner by arguing with colleagues and supervisors; on one occasion the staff member destroyed property during an argument; on two occasions the staff member made threatening remarks about the use of guns in the workplace. The staff

member admitted the conduct with regard to the first two incidents and apologized to the persons involved. *Disposition*: Separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: None.

27. A Security Officer, during a response to a night-time intrusion by two individuals on United Nations premises, unholstered a firearm and pointed it at one of the intruders, tackled the intruder to the ground and used disproportionate physical force while the intruder resisted attempts at being handcuffed. Evidence indicated that the staff member suffered from post-traumatic stress disorder, related to United Nations service in the field, at the time of the incident. *Disposition*: Demotion of one grade with deferment, for two years, of eligibility for consideration for promotion. *Appeal*: None.

28. In the course of a heated argument, a staff member used abusive language towards another staff member, and subsequently damaged a window pane in a United Nations office. Evidence indicated that the staff member was under stress because of a difficult working environment. *Disposition*: Censure and a fine representing the cost of repair of the window. *Appeal*: None.

Theft and misappropriation

29. A staff member removed, without authorization, a hard drive from a United Nations computer and sold the hard drive to an acquaintance. Although the staff member returned the hard drive, they did so only after being confronted with evidence of their misconduct and further to an official request. *Disposition*: Dismissal. *Appeal*: None.

30. A staff member, who was responsible for the safekeeping, handling and reporting changes of inventory of United Nations equipment, removed from United Nations premises, without permission, two laptop computers, four radios and two digital cameras. The staff member failed to report the subsequent loss of the equipment and failed to comply with instructions from the supervisor to return it. The staff member obtained one of the computers and one of the cameras by falsifying official request forms. Evidence indicated a lack of supervision and inventory control. *Disposition*: Separation from service with compensation in lieu of notice, but without termination indemnity. *Appeal*: None.

31. A staff member removed from United Nations premises, without authorization, 34 rolls of wire belonging to the Organization. The staff member's early admission of misconduct and full cooperation with the investigation were taken into account in determining the disciplinary measure. Also taken into account was evidence that indicated that the staff member had not acted alone, but with assistance of other staff members, whose conduct was not investigated. *Disposition*: Separation from service with compensation in lieu of notice, but without termination indemnity. *Appeal*: None.

32. Two staff members participated in the theft of copper wire from a United Nations warehouse. The staff members were convicted under national law for their complicity in the theft. The time taken to conclude the investigation and subsequent disciplinary process were taken into account in determining the disciplinary measure. *Disposition*: Separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: None.

Fraud, misrepresentation and false certification

33. Three staff members participated in a fraudulent scheme for the misuse of official United Nations flights by unauthorized individuals and companies. The staff members accepted payment for seats on the flights and processed forged documents, in particular Movement of Personnel forms, that were used by unauthorized passengers for travel; and two of the staff members entered names of unauthorized passengers on official flight manifests. One of the staff members conspired with third parties in the preparation of United Nations documents containing false information and attempted to interfere with an official investigation. The fraudulent scheme perpetrated by the staff members was long-running and widespread. The staff members held positions of trust and acted out of financial gain. The abuse created a serious threat to aviation security and exposed the Organization to liability and compensation. It damaged the Organization's reputation and undermined its relationship with local non-governmental organizations. *Disposition*: Dismissal of all staff members. *Appeal*: Deadlines to appeal had not expired as of the submission of the present report.

34. A staff member, who was an official with the local staff union, cashed to a personal account the proceeds of a cheque, made out to the staff union, that had been sent to the staff member's office pursuant to a fundraising initiative. The staff member also requested another staff member to falsify payslips and requested the Payroll Unit to certify falsified payslips. This case was the subject of two separate investigations and referrals but was processed as one disciplinary case. *Disposition*: Dismissal. *Appeal*: Filed with the Dispute Tribunal, where the case remains under consideration.

35. A staff member submitted falsified payslips in support of applications for bank loans. *Disposition*: Dismissal. *Appeal*: Filed with the Dispute Tribunal, where the case remains under consideration.

36. Four staff members submitted claims under the Medical Insurance Plan, containing false information in relation to dental treatment purportedly received by them and their dependants. One of the staff members also engaged in an outside occupation, namely, a loan-for-profit business, without the approval of the Secretary-General. With the exception of that staff member, the staff members exercised security functions. The evidence indicated that the staff members' actions were aimed at obtaining a personal pecuniary benefit, they acted knowingly and not from negligence or a momentary lapse of judgement and that the fraudulent scheme, in which they were involved, put the reputation of the Organization at risk. *Disposition*: Dismissal of all staff members. *Appeal*: Deadline to appeal has not expired as of the submission of the present report.

37. Two staff members submitted claims under the medical insurance plan, containing false information in relation to dental treatment purportedly received by them and their dependents. The staff members made an early admission of their misconduct and cooperated fully with the investigation. Evidence indicated the coercive involvement of another staff member, who prepared the claim forms for the staff members and under whose advice and guidance the staff members acted. *Disposition*: Separation from service, with compensation in lieu of notice but without termination indemnity. *Appeal*: Deadline to appeal had not expired as of the submission of the present report.

38. A staff member submitted a personal history profile containing information that the staff member knew to be false, relating to the reasons for leaving previous employment. The staff member failed to disclose in the profile a prior criminal conviction, for which the staff member was dismissed by the previous employer. The staff member also submitted to the Organization a Certificate of Discharge, from the previous employer, which the staff member knew was a forgery. The staff member made an early admission of the misconduct and cooperated fully with the investigation. *Disposition*: Separation from service with compensation in lieu of notice but without termination indemnity. *Appeal*: None.

39. A staff member falsified invoices for medical treatment and subsequently submitted them to the staff member's private insurance company in support of medical claims. The staff member made an early admission of the misconduct and cooperated fully with the investigation. The time taken to conclude the investigation and the subsequent disciplinary process were taken into account in determining the disciplinary measure. *Disposition*: Separation from service with compensation in lieu of notice but without termination indemnity. *Appeal*: None.

40. A staff member created a false note verbale on official letterhead on their United Nations computer. The staff member forged the signature of another staff member, and sold the note verbale to another staff member in order for the latter to obtain a non-immigrant visa. Several false documents, such as fake diplomas, were found on the staff member's United Nations computer. Mitigating factors were taken into account in determining the disciplinary measure, including flaws in the investigation process and the time taken to complete the disciplinary process. *Disposition*: Separation from service with compensation in lieu of notice but without termination indemnity. *Appeal*: None.

41. A staff member paid another staff member to obtain a note verbale in support of an application for a visa. The staff member subsequently submitted the note verbale to an embassy. Evidence indicated that the staff member had initially requested the note verbale in good faith, but when the staff member submitted the document, they knew that it contained false information. In determining the disciplinary measure, the staff member's initial good faith and the coercive involvement of another staff member were taken into account. *Disposition*: Separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: None.

Misuse of or failure to exercise reasonable care in relation to United Nations property or assets

42. A staff member took, without authorization, discarded batteries and attempted to remove them from United Nations premises. The staff member also moved, without authorization, a fuel pump from its proper location within United Nations premises. There was insufficient evidence that the staff member intended to steal the property. This case was the subject of two separate investigations and referrals, but was processed as one disciplinary case. *Disposition*: Censure, a loss of two steps in grade and a deferment, for two years, of eligibility for salary increment. *Appeal*: None.

43. A staff member left the scene of a minor accident in which they were involved while operating a United Nations vehicle. There was no violation of local laws. The staff member made attempts at reparation for the damage to the vehicle. *Disposition*:

Censure and deferment, for one year, of eligibility for salary increment. *Appeal*: Deadline to appeal had not expired as of the submission of the report.

44. A staff member took without authorization a roll of linoleum belonging to the Organization, and damaged it by cutting it into several pieces. There was insufficient evidence that the staff member intended to steal the property. *Disposition*: Censure. *Appeal*: None.

45. A staff member, who performed security functions, violated the applicable curfew and drove at an excessive speed while operating a United Nations vehicle. The staff member was previously subject to administrative measures, namely withdrawal of the staff member's driver's licence and reassignment. *Disposition*: Censure. *Appeal*: None.

46. A staff member, while off duty and without prior authorization, drove from United Nations premises a United Nations vehicle, which, at the time, contained United Nations assets, namely, miscellaneous electrical equipment. There was insufficient evidence that the staff member intended to steal the property. *Disposition*: Censure. *Appeal*: None.

47. A staff member, while on official duty and without prior authorization, and in return for payment from a non-staff member, used a United Nations vehicle to transport a container to a location outside the mission. The staff member also misused access to the location to which they delivered the goods, which the staff member enjoyed by virtue of official functions as a driver. *Disposition*: Censure. *Appeal*: None.

Misuse of official documents, records or files

48. A staff member issued, without authorization, letters to various government offices seeking assistance in issuing visas to persons accompanying an official United Nations mission. The staff member signed the letters in the name of another staff member, without that staff member's knowledge or consent. In relation to five of the falsified letters that the staff member issued, the staff member acted contrary to express instructions that they were not authorized to do so. The evidence indicated that the staff member's actions were not in pursuit of personal gain, and that the staff member had acted under pressure to facilitate the official mission and in the absence of clear standard operating procedures regarding the same. *Disposition*: Written censure and demotion of one grade, with deferment for one year of eligibility for consideration for promotion. *Appeal*: Deadline to appeal had not expired as of the submission of the report.

49. A staff member, in the course of official functions, altered a travel quotation provided by an airline and submitted the altered quotation for approval, in order to prevent another staff member from having to use the services of a specific airline, against which other staff members had voiced complaints. The staff member made an early admission of the misconduct and cooperated fully with the investigation. There was no evidence that the staff member's conduct was motivated by personal gain. *Disposition*: Fine and censure. *Appeal*: None.

Misuse of information and communications technology resources

50. A staff member received e-mails containing pornographic material, through the United Nations e-mail system, on at least 20 occasions; failed to report, to the

proper authority, the receipt of the e-mails from other United Nations staff members; and sent e-mails containing pornographic material, using the United Nations e-mail system, on at least 130 occasions. *Disposition*: Censure and loss of two steps in grade with deferment, for two years, of eligibility for salary increment. *Appeal*: None.

51. A staff member received e-mails containing pornographic material, through the United Nations e-mail system, on at least 24 occasions; failed to report, to the proper authority, the receipt of the e-mails from other United Nations staff members; and sent e-mails containing pornographic material, using the United Nations e-mail system, on at least 24 occasions. *Disposition*: Censure. *Appeal*: None.

Unauthorized outside activities and conflict of interest, including procurement irregularities

52. A staff member failed to exercise discretion with regard to matters of official business by reporting to the press and outside government agencies information that was subject to official internal investigations; communicating to outside sources, including the press, information, known to the staff member by reason of the staff member's official position, that the staff member knew or ought to have known had not been made public; by using a United Nations office for personal reasons to prejudice the positions of those whom the staff member did not favour; and engaging in an outside occupation, without the approval of the Secretary-General. *Disposition*: Dismissal. *Appeal*: Filed before the Dispute Tribunal, and subsequently withdrawn.

53. A staff member was employed by their government for one year while employed with the Organization, without the approval of the Secretary-General. A conflict of interest existed between the nature of the staff member's outside activities and their status as a staff member. The time taken to conclude the investigation and subsequent disciplinary process were taken into account in determining the disciplinary measure. *Disposition*: Separation from service, with compensation in lieu of notice and with termination indemnity. *Appeal*: Filed with the Dispute Tribunal, where the case remains under consideration.

54. A staff member continued to work for a private company when the staff member joined the Organization, without the approval of the Secretary-General. The staff member was, as part of their official functions, assigned to provide assistance and advice for an official event, and arranged for the private company to enter into a remunerated contract in connection with the event. It was noted as a mitigating factor that the staff member's functions were not related to official procurement functions. *Disposition*: Separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: Filed with the Dispute Tribunal, where the case remains under consideration.

55. After repeated procurement exercises had failed to secure certain aircraft that were necessary in a peacekeeping mission, two staff members engaged in communications with an aircraft company regarding the specifications of the aircraft required by the Organization. The staff members acted under the instructions of their supervisor to contact potential vendors and there was no evidence that the staff members were motivated by personal gain. *Disposition*: Censure and requirement to attend training. *Appeal*: None.

IV. Summary of cases received and completed during the reporting period 1 July 2011-30 June 2012

A. Cases received by the Office of Human Resources Management

56. The tables and the figures in this section provide information on the numbers and types of cases that were referred to the Office of Human Resources Management for action during the reporting period from 1 July 2011 to 30 June 2012.

Cases received by the Office of Human Resources Management during the reporting period

Staff based at United Nations Headquarters and offices away from Headquarters	35
Field staff	60
Total	**95**

Table 1
Percentage of cases received related to staff from the field and Headquarters and offices away from Headquarters

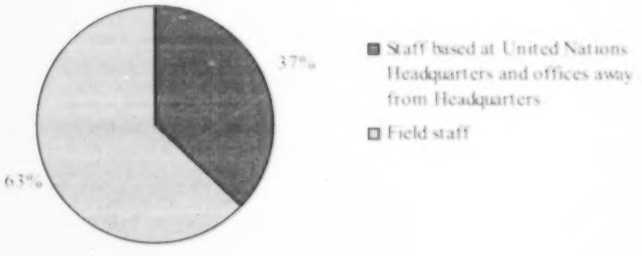


Table 2
Cases received by type of misconduct

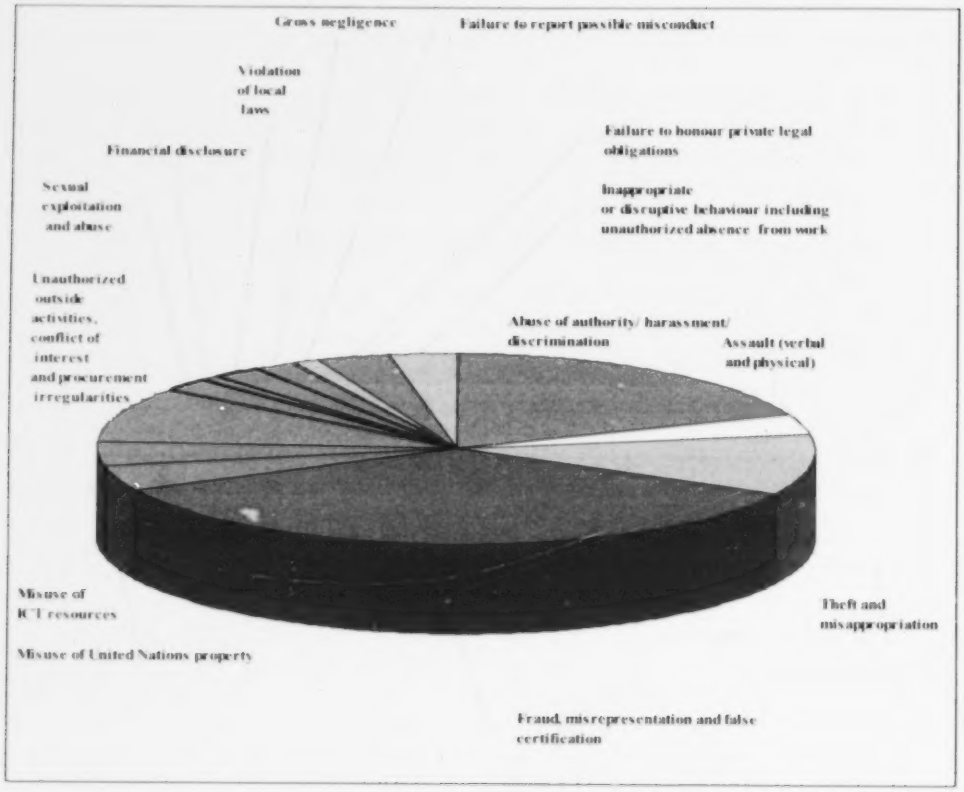
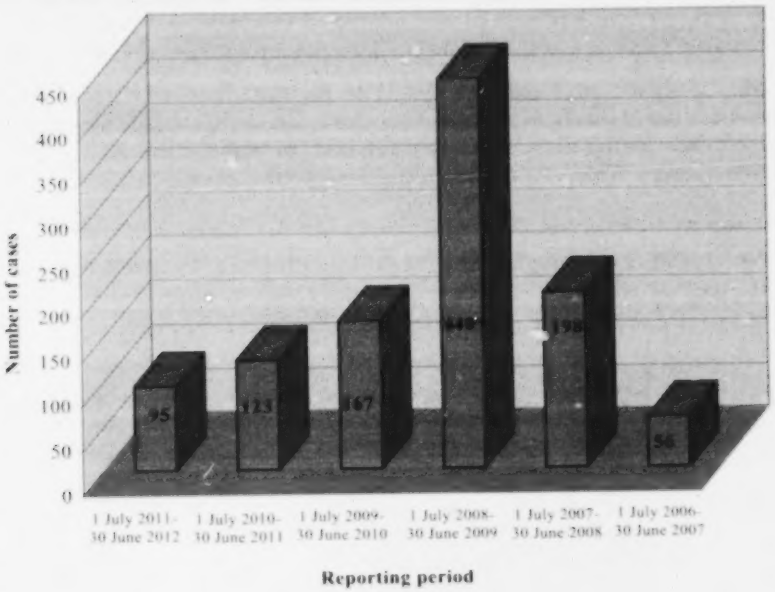

Gross negligence
Failure to report possible misconduct
Violation of local laws
Failure to honour private legal obligations
Financial disclosure
Sexual exploitation and abuse
Inappropriate or disruptive behaviour including unauthorized absence from work
Unauthorized outside activities, conflict of interest and procurement irregularities
Abuse of authority/ harassment/ discrimination
Assault (verbal and physical)
Misuse of ICT resources
Theft and misappropriation
Misuse of United Nations property
Fraud, misrepresentation and false certification

Table 3
Number of cases received by the Office of Human Resources Management in the past six reporting periods



[a] A number of cases were related to allegations of misuse of information and communications technology resources and failure to meet financial disclosure obligations.

B. Cases completed during the reporting period

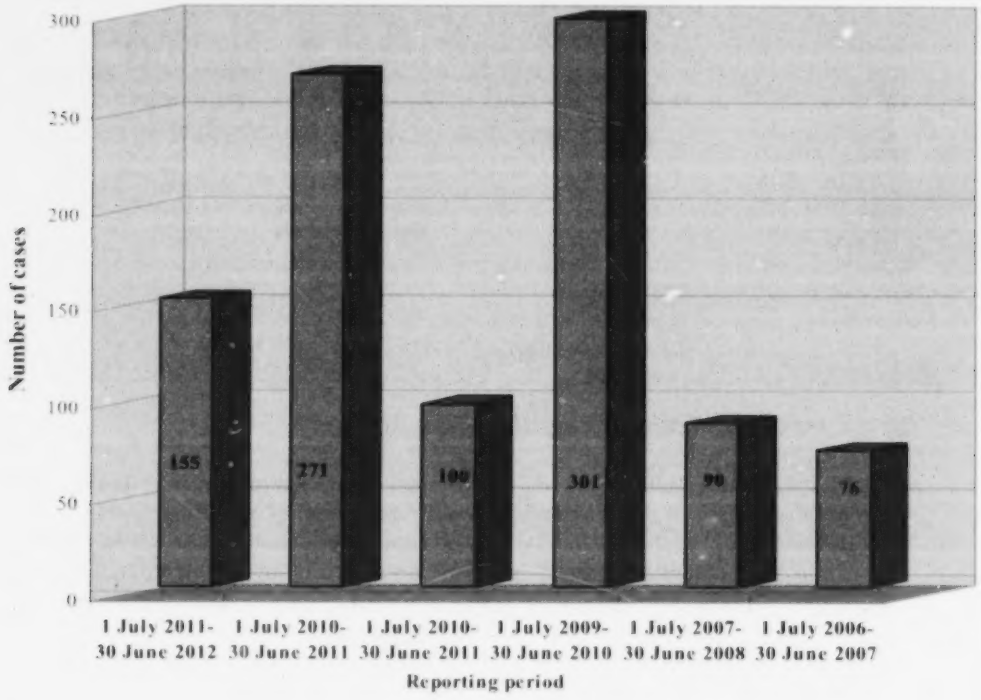
57. The tables and the figures in this section provide information on the numbers and disposition of cases completed during the reporting period, including those that did not result in the imposition of a disciplinary measure. The length of time for completion of the disciplinary process varies depending on the complexity of the matter. During the reporting period, a number of factors have impacted upon the processing of disciplinary cases. Considerable jurisprudence on the disciplinary and pre-disciplinary process continued to emerge from the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which added to the complexity, and hence the length, of the disciplinary process. The Appeals Tribunal stipulated that, in cases in which termination is a possible outcome, misconduct must be established by "clear and convincing evidence", meaning that the truth of the facts asserted is "highly probable". The changing judicial landscape, in particular, the higher standard of proof articulated by the Appeals Tribunal, resulted in increasingly detailed analyses and scrutiny of every aspect of each case referred for disciplinary action, including obtaining clarifications and additional evidence from the investigating entity. The time taken to process a disciplinary case must also factor in the timing of the response of the staff member concerned to the allegations of misconduct against him or her. In many cases, staff members requested extensions

of time in which to respond to allegations of misconduct. For staff members serving in the field, additional time was often needed for them to consult the Office of Staff Legal Assistance, or other counsel, who were located remotely from the staff member. After responses were received from staff members, it was often necessary to seek further clarifications and additional evidence, and then to obtain the staff member's further comments on the additional information or evidence received.

58. It should be noted that, owing to the time required to process disciplinary matters under established procedures, the figures reflect cases completed during the reporting period that had been referred to the Office of Human Resources Management both prior to and during the reporting period.

Table 4

Number of cases completed by the Office of Human Resources Management in the past six reporting periods



59. The increased complexity of the disciplinary process also affected the disposition of cases. The Dispute Tribunal has emphasized that, when the Assistant Secretary-General for Human Resources Management decides whether a matter should be pursued as a disciplinary case, he or she is vested with a discretion that should be exercised judiciously. The Tribunal has also held that a decision to charge a staff member with misconduct must, firstly, be justified by facts and evidence that raise a prima facie case against the staff member and, secondly, must comply strictly with any procedural rules or regulations on the conduct of an investigation and the

charging process. If the decision is flawed on one or both the substantive and the procedural requirements, the Tribunal has held that it is amenable to judicial review. Accordingly, the analytical process, in deciding whether to charge a staff member with misconduct, is as detailed and time-consuming as the post-charging stage, in determining whether the staff member has committed misconduct and, if so, the disposition of the case. A number of factors resulted in cases that were not pursued as disciplinary matters or closed with no measure. In many cases, the underlying investigation and supporting evidence failed to meet the higher evidential and procedural standards articulated by the United Nations Appeals Tribunal and the United Nations Dispute Tribunal, as outlined in paragraph 57 above. In some cases, the length of time taken to conduct an initial investigation and/or to obtain clarifications and additional evidence, at the disciplinary stage, and the resultant delay in the process, led to closure of the case. In some cases, the comments of the staff member were obtained following referral of the case and, based on an assessment of those comments, a decision was made that the staff member's actions did not amount to possible misconduct and/or should have been dealt with in a performance context. In some cases, evidence of good faith actions by the staff member, for example, fulfilling their outstanding private legal obligations, or making reasonable efforts to comply with financial disclosure obligations, resulted in a decision not to pursue the case as a disciplinary matter. In some cases, because of managerial or administrative action taken in relation to the staff member, at the office, the departmental or the mission level, it was decided not to initiate a disciplinary process. The figure for cases closed with no measure also included cases in which the Assistant Secretary-General for Human Resources Management received a request to place a staff member on administrative leave with pay, but decided not to do so because one or more of the criteria, as set out at paragraph 9 above, were not satisfied.

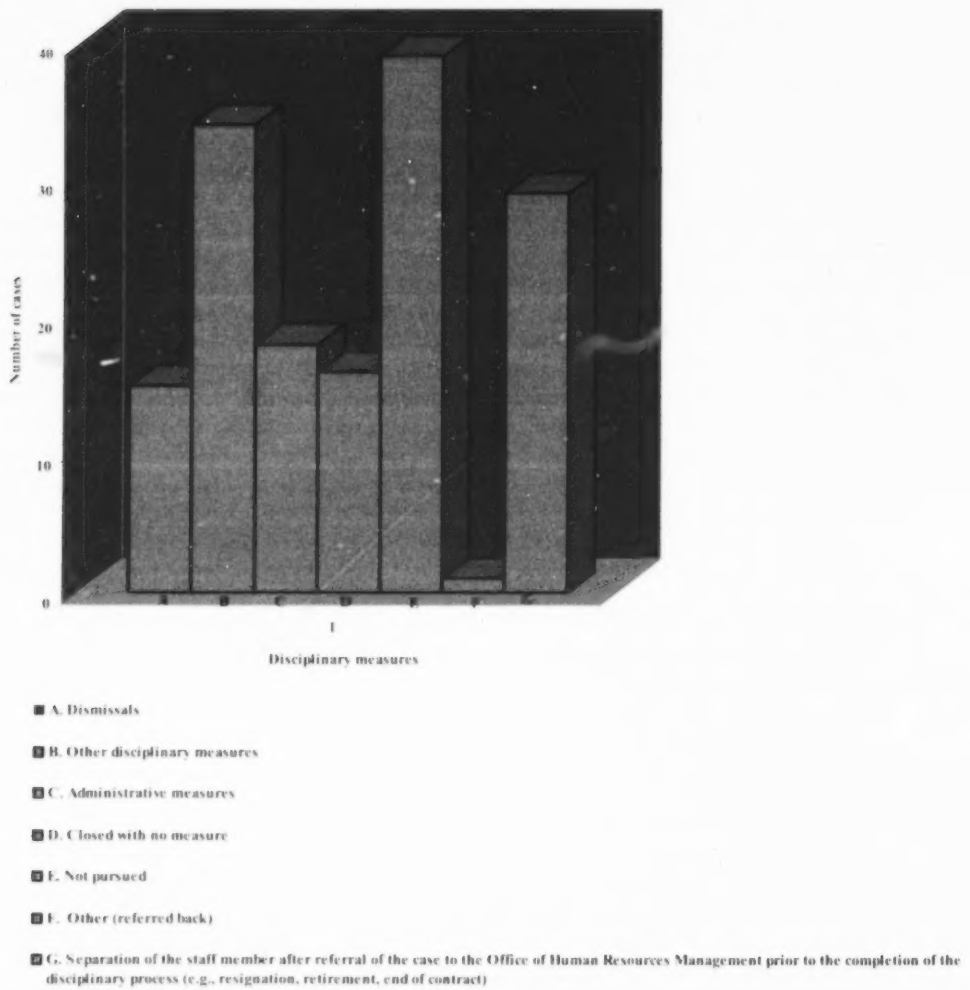
Disposition of cases completed, 1 July 2011-30 June 2012

Dismissals	15
Other disciplinary measures	34
Administrative measures[a]	18
Not pursued (staff member not charged with misconduct)	39
Closed with no measure (after charging with misconduct)	16
Separation of the staff member after referral of the case to the Office of Human Resources Management prior to the completion of the disciplinary process (e.g., resignation, retirement, end of contract)	29
Other including referral back to programme manager for action	1
Total	**152**[b]

[a] Administrative measures include written or oral reprimands, which are important for upholding standards of proper conduct and promoting accountability. Additionally, where behaviour affects performance, the issue is addressed in the context of performance management, which may include training, counselling, withholding of salary increments or non-renewal or termination of appointment.

[b] The dispositions relate to 155 cases in total because three staff members each had two cases referred during the period and only one disposition per staff member was made with respect to both cases.

Table 5
Disposition of cases completed, 1 July 2011-30 June 2012



V. Possible criminal behaviour

60. In its resolution 59/287, the General Assembly requested the Secretary-General to take action expeditiously in cases of proven misconduct and/or criminal behaviour and to inform Member States about the actions taken. During the reporting period, seven cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States. One

of the cases referred involved seven staff members. The Secretary-General is not aware of any action taken in respect of such cases by the Member States concerned.

VI. Conclusion

61. **The Secretary-General submits the present report to the General Assembly and invites it to take note of the report.**